

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE MASTER’S MIRACLE, INC.,

Plaintiff,

v.

HEALTH WIZE, et al.,

Defendants.

CASE NO. C04-2488JLR

ORDER

This matter comes before the court on the motion of Plaintiff The Master’s Miracle, Inc. (“TMM”) to dismiss portions of Defendants’ counterclaims for failure to state a claim (Dkt. # 26). Defendants have not opposed the motion. The court GRANTS the motion in part and DENIES it in part.

TMM brings its motion to dismiss under Fed. R. Civ. P. 12(b)(6). The court may dismiss a claim only if it appears beyond doubt that the complainant can prove no set of facts in support of his claim which would entitle him to relief. Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). In reviewing the allegations of the complaint, all material allegations are accepted as true, as well as all reasonable inferences to be drawn from them. Id. The court must also grant a motion to dismiss where the complainant has no “cognizable legal theory” to tie the factual allegations into a claim upon which the court can grant relief. Id.

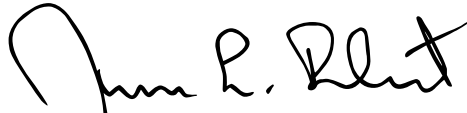
1 With that liberal standard in mind, the court declines to dismiss Defendants'
2 counterclaims for theft. The court construes those counterclaims as claims for
3 conversion, and the court finds that Defendants could prove a set of facts that would
4 entitle them to relief. For the same reason, the court declines to dismiss Defendants'
5 deceptive business practice counterclaims.

6 The court dismisses all of Defendants' counterclaims that sound in fraud,
7 including their ninth, tenth, twelfth, and thirtieth counterclaims. Under Fed. R. Civ. P.
8 9(b), these claims must be pled with particularity. Defendants' counterclaims do not
9 contain the requisite particularized allegations of fraud. The court dismisses those
10 counterclaims without prejudice.

11 For the reasons stated above, the court GRANTS TMM's motion in part and
12 DENIES it in part. (Dkt. # 26).

13 Dated this 26th day of May, 2005.

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JAMES L. ROBART
United States District Judge